

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 738 of 2004 (O&M)
Date of Decision : 07.04.2015

Harjit Singh

....Petitioner

Versus

Ajit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Hitesh Kaplish, Advocate
for the petitioner.

Mr. Satinder Khanna, Advocate
for the respondent.

R.P. Nagrath, J.

The petitioner sought eviction of the respondent from the shop in question on the grounds *inter alia*;

- (i) That the tenant is in arrears of rent w.e.f. 01.12.1994;
- (ii) that the demised premises have become unfit or unsafe for human habitation; and
- (iii) that the shop in question is required for *bonafide* personal need and occupation of the landlord.

2. It was not a disputed question that arrears of rent were paid on the first date of hearing and therefore, that ground of eviction no more survives. The other two grounds of eviction have

been agitated in the instant revision.

3. Learned Rent Controller framed the following issues from the pleadings of the parties:-

- (i) Whether the respondent is in arrears of rent since 01.12.1994? OPP
- (ii) Whether the shop in dispute is unfit and unsafe for human habitation? OPP
- (iii) Whether the shop in dispute is required by the applicant for his personal use and occupation? OPP
- (iv) Whether the present petition is not maintainable? OPR
- (v) Relief.

4. The grounds of eviction were held not proved and rent petition was dismissed. The order of the Rent Controller has also been upheld by the Appellate Authority.

5. I have heard learned counsel for the parties and perused the records quite carefully.

6. On the ground of premises having become unfit and unsafe for human habitation, the precise allegation of the petitioner was that the building is 100 years old and made of old bricks and mud mortar. Big cracks have been developed in the walls of the shop in question and mud mortar have left its place. Roof of the shop is made of wooden *ballas* and batons, which have become hollow and some portion of the roof of the shop in question has

fallen down. Walls of the shop in question cannot bear weight of the roof. The floor is *kachha* one and about 2 ft. below the road level. It was denied that the shop in question is 100 years old building, rather the construction was made of standard bricks. In fact, the petitioner has joined hands with his tenants occupying *chaubaras* on the upper floor and in connivance with them the landlord damaged the roof which gave way to six batons, which the petitioner has done mischievously to cause loss to the respondent in his business. In fact the petitioner had to file a suit for permanent injunction restraining the petitioner from interfering in his peaceful possession over the shop in question and to cause any damage. The petitioner refused to carry out the necessary repairs.

7. Apart from the oral evidence, the petitioner also examined civil engineer and architect, namely; A.P. Singh (AW-7) to support his version to prove this ground of eviction. The other material witnesses on this issue are AW-3 Yashpal and AW-4 Amarjit, who are the other two tenants on the *chaubara* constructed over the shop in question. AW-3 and AW-4 also supported the case of the petitioner. After analysis of the evidence, it was categorically held by the courts below that the ground of eviction is not proved.

8. On the other hand, the respondent examined RW-3 Jasbir Singh having diploma in civil engineering, who prepared the report on the spot visit Ex. RW-3/1 and stated that the shop in

question is safe except for the damaged part which can be easily repaired.

9. Learned appellate authority has observed as under:-

“....Three chubaras, as proved from the evidence on record, are standing on the shop in dispute. Under these circumstances, the question of the walls of the shop, in dispute, not bearing the weight of the roof, did not at all arise. Even Harjit Singh, landlord admitted that the shop, in question, was built of standard size bricks. He further stated that no repair had ever been got effected by him, in the shop, in dispute, since the date, it was given, on rent, to the respondent. He also stated that the remaining portion of the building was also built of standard size bricks. Amarjit, AW-4, admitted that the walls of the shop, in dispute, were cement teaped. A.P. Singh, AW-7, however, stated that the same were not cement teaped. This clearly goes to show that he either did not visit the demised premises, or made a false statement, to the effect, that the walls of the shop, in dispute, were not cement teaped. Since, the shop, in question, and the remaining portion of the building was constructed with standard size bricks, it could not be said to be 100 years old, when Nanak Shahi bricks, were in vogue. Under these circumstances, the age of the building, as deposed to

by the landlord, and his expert, could not be said to be correct. The standard sized bricks, in my opinion, came into existence not more than 50 years ago. Had the shop been 100 years old, it would have been constructed with Nanak Shahi bricks, which were in vogue, at that time and not for the standard sized bricks. The plea of the landlord to the effect that the building being 100 years old, was unfit and unsafe for human habitation, therefore, falls to the ground. No doubt, it is proved from the evidence that some cracks had developed in the walls. However, it may be stated here that mere appearance of some cracks, in the walls, does not make the building unfit and unsafe for human habitation. It is a matter of common experience, that now a days, even in the newly constructed buildings, the cracks do appear, within a period of 3/4 years. That does not mean that the said building becomes unfit and unsafe for human habitation. The shop, in question, is a part and parcel of a big building. The width of the shop, in dispute, is 15 feet. The remaining portion of the entire property, is 45 feet in width, and is in possession of the landlord, wherein he is running a shop of furniture. On the back side of the shop of the respondent, the landlord has constructed a godown. The case of the respondent was that some

rafters of the shop, in question, had fallen of its own, or a portion of the roof had fallen, that did not mean that the shop, in question, had become unfit and unsafe for human habitation. Keeping in view the overall condition of the building, in dispute, as depicted above, it can be said that it had not become unfit and unsafe for human habitation.”

10. Learned counsel for the petitioner, vehemently, contended that the Rent Controller has given the finding on the basis of the assumption that standard bricks were not available at the time when the building in question was constructed, which is not permissible. I am, however, of the view that there is no scope of interference in the appreciation of evidence by both the courts below. This was not the version of petitioner or any of his witnesses especially AW-3 Yashpal and AW-4 Amarjit, the tenants in two of the *chaubaras* existing over the shop in question that those *chuabaras* are unsafe for human habitation. If that be the fact situation, it would become quite apparent that the building in question of which the demised shop is a portion is quite safe and fit for human habitation. It may be due to some mischief committed by the petitioner-landlord that the nature of the construction i.e. *ballas* etc. had fallen which can be easily repaired as brought on record during evidence.

11. Learned counsel for the petitioner, however, referred to **Nanak Chand vs. Inderjit, 1969 RCR (Rent) 887**, wherein Hon'ble

Supreme Court held that the revisional power conferred on the High Court under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short to be referred to as 'the Act'), is wider than that conferred by Section 115 of the Code of Civil Procedure. It was held that under Section 15 (5) of the Act, the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the finding by the authorities about the requirement of the landlord under Section 13(3)(a)(i).

12. However, in a recent judgment, Constitutional Bench of Hon'ble Supreme Court in **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCC 78**, held that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in the view of Hon'ble Supreme Court, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction *suo motu* unless so provided expressly. None of these statutes confers on revisional authority the power as wide as that of appellate court or appellate authority despite such power being wider than that provided in Section 115 CPC. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the trial Court/Rent Controller and

Appellate Court/Appellate Authority for re-hearing of the issues raised in the original proceedings. Hon'ble Supreme Court reiterated the principle laid down in **T. Sivasubramaniam and others vs. Kasinath Pujari and others, 1999 (7) SCC 275** that the High Court does not enjoy an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. This view was held as correct and approved. Hon'ble Supreme Court held as under:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result

in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

13. In **Daulat Ram vs. Pt. Laxmi Narain, 2003 (2) RCR (Rent) 353**, this Court held as under:-

“4. Both the Courts have found that there was

*problem of water logging in the area of Muktsar and because of that certain cracks have appeared. There is no evidence that such cracks have endangered the entire building of which tenant is in possession in part. It has been held in Division Bench of this Court in **Sardarni Sampuran Kaur and another vs. Sant Singh and another, 1982 (1) RCR (Rent) 413 (P&H)** that until and unless there is an evidence to the effect that the entire integrated building is in dilapidated condition, no order of ejectment can be passed. The petitioner has led evidence regarding unfit condition of the premises in dispute in possession of the tenant alone. In the absence of any evidence to the effect that the entire building is in dilapidated condition, the tenant cannot be ordered to be evicted. Both the courts have discussed the entire evidence and returned a finding that the building is not in a dilapidated condition and have not become unfit and unsafe for human habitation.”*

14. Present is rather a case where the tenants who are in occupation of the *chaubaras* built over the shop in question do not say at all that the *chaubaras* in their occupation are in any way unfit or unsafe for human habitation. A Division Bench of this Court in ***Sardarni Sampuran Kaur's case (supra)*** held that if

substantial part of integrated building has become unfit and unsafe for human habitation, the tenant can be evicted from the demised premises forming part thereof. Present is not such a situation as the tenants are occupying the upper portion of the shop in question called *chaubara* whereas the landlord is seeking eviction of the tenant from the shop in question which is on the ground floor. Thus the courts below have rightly appreciated the evidence and on proper analysis came to the conclusion against the petitioner which cannot be interfered with in exercise of revisional jurisdiction.

15. The other ground of eviction that survives is that demised shop is required for personal use and occupation of the petitioner. It was stated that the petitioner has two sons, namely; Jatinder Singh and Satwinder Singh, who is going to be married soon. Both the sons of petitioner are unemployed and not doing any work or business. The petitioner wanted to settle his sons in the shop in question by demolishing the old construction and raising the new construction.

16. The categorical stand of the respondent was that there are three other shops which the petitioner is occupying for his business alongwith his sons.

17. Learned Appellate Authority on analysis of evidence observed as under:-

“.....It is proved from the evidence on record that the landlord owns and occupies 14/15 marlas of land, where he was running his business, adjoining the

shop, in dispute. He also owns and occupies another building measuring 10 ft. x 7 ft. He has also installed saw machine. It is also proved from the evidence on record that the area of the building of which the shop in dispute forms part is 60 ft. x 45 ft. The tenant is only in possession of the shop measuring 15 feet in width and 45 feet in length. The remaining area measuring 45 x 45 feet is also in possession of the landlord. The landlord himself admitted this fact during the course of his cross-examination. The landlord has also got one godown measuring 8 feet x 8 feet, which is in his possession. It clearly goes to prove that the landlord has got sufficient property, in his occupation referred to above.”

18. Therefore, petitioner concealed the aforesaid material facts in his pleadings and there is no scope of interference in exercise of revisional jurisdiction of this Court.

19. It was vehemently contended by learned counsel for the petitioner that the respondent is having another shop at Hoshiarpur road, Phagwara which he got about 35 years old. That cannot be the basis to seek eviction of the tenant of the shop which is in occupation of the respondent for the past 35 years. Such a ground could be available to a landlord under the Haryana Urban (Control of Rent and Eviction) Act, 1973 and not under the East Punjab Urban Rent Restriction Act, 1949. The respondent Ajit

Singh as RW-2 rather stated in cross-examination that his son installed a saw mill in the premises situated at Hoshiarpur road, Phagwara. However, that property is in the name of respondent. The saw mill was installed about 7 or 8 years ago. The present is not a case where the petitioner-landlord is seeking eviction on the ground of tenant having ceased to occupy the demised premises for a continuous period of four months without any reasonable cause.

20. As a result of aforesaid discussion, I find no merit in the instant revision and the same is dismissed.

April 07, 2015
jk

(R.P. NAGRATH)
JUDGE